All withheld information exempt under (b)(1) and (b)(3) unless otherwise noted

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U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2016 SEP 26 PM 12: 26

CLERK OF COURT

EXHIBIT E

(U) MINIMIZATION PROCEDURES USED BY THE CENTRAL INTELLIGENCE AGENCY IN CONNECTION WITH ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AS AMENDED

(U) With respect to unminimized communications the Central Intelligence Agency (CIA) receives from the National Security Agency (NSA) or the Federal Bureau of Investigation (FBI) that are acquired pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA or "the Act"), CIA will follow the following minimization procedures:

1. (U) Definitions:

   a. (U) As used herein, the terms "Attorney General," "foreign power," "agent of a foreign power," "United States person," "person," "foreign intelligence information," "international terrorism," and "sabotage" have the meanings specified in sections 101 and 701 of the Act.

   b. (U) The term "United States person identity" means (1) the name, unique title, or address of a United States person; or (2) other personal identifiers of a United States person when appearing in the context of activities conducted by that person or activities conducted by others that are related to that person. A reference to a product by brand name or manufacturer's name, or the use of a name in a descriptive sense, e.g., "Monroe Doctrine," is not a United States person identity.

   c. (U) For purposes of these procedures, "metadata" is dialing, routing, addressing, or signaling information associated with a communication, but does not include information concerning the substance, purport, or meaning of the communication.

   d. (U) For purposes of these procedures, the terms "Central Intelligence Agency," "CIA," and "CIA personnel" refer to any employees of CIA and any other personnel acting under the direction, authority, or control of the Director of the CIA, as well as to employees of other U.S. Government agencies who are physically located at CIA and who are granted access to CIA systems to perform duties in support of CIA operations, but who retain the authorities and responsibilities of their parent organization. Such personnel must specifically agree to: comply with these minimization procedures; comply with all CIA direction on the handling of information acquired under section 702; and not make any use of, share, or otherwise disseminate any information acquired pursuant to section 702 without specific CIA approval.

2. (U) Unminimized communications acquired in accordance with section 702 of the Act and received by CIA will be maintained in access-controlled repositories that are accessible only

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to those who have had the required training and are physically or logically separated from repositories with general access. Unminimized communications that may contain United States person information that does not otherwise qualify for retention under paragraphs 3, 6, or 8 of these procedures may be retained in such access-controlled repositories for no longer than five years from the expiration date of the certification authorizing the collection unless the Deputy Director of the CIA for Operations (DDO), or one of his or her superiors, determines that an extension is necessary because the communications are reasonably believed to contain significant foreign intelligence information, or evidence of a crime that has been, is being, or is about to be committed. An extension under this paragraph may apply to a specific category of communications, and must be documented in writing, renewed on an annual basis, and promptly reported to the Department of Justice's National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI).

3. (U) Information concerning a United States person may be retained by CIA indefinitely and outside of access-controlled repositories if (a) the information concerning the United States person is publicly available; (b) the United States person has consented to retention of the information concerning him or her; or (c) the United States person identity is deleted or otherwise sanitized to prevent the search, retrieval, or review of the identifying information (a generic term may be substituted which does not identify the United States person in the context of the data). If the information cannot be sanitized in such a fashion because the identity is necessary, or it is reasonably believed that it may become necessary, to understand or assess the information, CIA may retain that information and the United States person identity indefinitely and outside of access-controlled repositories if:

   a. (U) The information is foreign intelligence information. Such information includes, but is not limited to, information falling within one or more of the following categories:

      (1) (U) the information indicates that the United States person has acted or may be acting as an agent of a foreign power, including information indicating that a United States person was in contact with a foreign power under facts and circumstances indicating that he intends to collaborate with a foreign power or become an agent of a foreign power;

      (2) (U) the information indicates that a United States person may be a target of intelligence activities of a foreign power; or

      (3) (U) the information indicates that a United States person has engaged or may be engaging in the unauthorized disclosure of properly classified national security information;

   b. (U) The information concerns corporations or other commercial organizations the deletion of which would hamper the correlation of foreign intelligence information on the same subject;

   c. (U) The information is enciphered or contains secret meaning;

d. (U) The information is needed to protect the safety of any persons or organizations, including those who are targets, victims, or hostages of groups engaged in international terrorism;

e. (U) The information concerns a United States person who is or reasonably appears to be, on the basis of that or other information, an agent of a foreign power;

f. (U) The information indicates that a United States person is engaged or may be engaged in international terrorism or activities in preparation therefor;

g. (U) The information is needed and retained solely to identify individuals in contact with a foreign power or an agent of a foreign power (including for purposes of this subparagraph (g) any person, regardless of location, who engages in international terrorism or activities in preparation therefor; who aids, abets, or conspires with persons to engage in such activities; or who acts as a member of a group engaged in such activities);

h. [redacted]

i. (U) The information concerns a person or activity that poses a threat of sabotage, international terrorism, actual or potential attack or other grave hostile act, to any facility or personnel of any agency within the U.S. Intelligence Community, or any department containing such an agency;

j. (U) The information indicates that a United States person may be a target of intelligence activities of a foreign power; or

k. (U) The information concerns a U.S. Government official acting in an official capacity.

4. ~~(S//NF)~~ CIA personnel may query CIA electronic and data storage systems containing unminimized communications acquired in accordance with section 702 of the Act. [redacted]. Such queries must be reasonably likely to return foreign intelligence information, as defined in FISA. Any United States person identity used to query the content of communications must be accompanied by a statement of facts showing that the use of any such identity as a query term is reasonably likely to return foreign intelligence information, as defined in FISA. CIA will maintain records of all such queries using United States person identities; and NSD and ODNI will review CIA's queries of content using any such identity as a query term to ensure that they were reasonably likely to return foreign intelligence information, as defined in FISA.

a. (U) Notwithstanding the above, CIA personnel may query CIA electronic and data storage systems that contain metadata to find, extract, and analyze metadata pertaining to communications. CIA may also use such metadata to analyze communications and may

upload or transfer some or all such metadata to other CIA electronic and data storage systems for authorized foreign intelligence purposes. Any dissemination outside of CIA of metadata from communications acquired under section 702 of the Act must be made in accordance with the applicable provisions of these procedures.

b. (U) For purposes of this section, the term query does not include a user's search or query of a CIA electronic and data storage system that contains raw FISA-acquired information, where the user does not receive the underlying raw FISA-acquired information in response to the search or query or otherwise have access to the raw FISA-acquired information that is searched.

5. (U) Any information retained pursuant to paragraph 3 above may be disseminated to otherwise authorized recipients outside of CIA if the identity of the United States person and all personally identifiable information regarding the United States person are deleted or otherwise sanitized to prevent the search, retrieval or review of the identifying information. A generic term may be substituted which does not identify the United States person in the context of the data. However, if the information cannot be sanitized in such a manner because such person's identity is necessary to understand foreign intelligence information or assess its importance, that identity may be disseminated outside of CIA without such person's consent. Additionally, if the information cannot be sanitized in such in a manner because it is reasonably believed that such person's identity may become necessary to understand or assess the importance of foreign intelligence information as defined by 50 U.S.C. § 1801(e)(1), that identity may be disseminated outside of CIA without such person's consent.

6. (U) Nothing in these procedures shall prohibit:

a. (U) The retention or disclosure of information necessary for the purpose of determining whether the requirements of these procedures are satisfied, provided that the recipient under this paragraph does not retain or disclose the identity of a United States person where it is determined that the requirements of these procedures do not permit dissemination;

b. (U) The retention of communications necessary for the maintenance of technical data bases, so long as only collection or technical personnel have access to such data bases;

c. (U) The retention or dissemination of information concerning corporations or other commercial organizations which is limited to their identities as manufacturers of equipment and related nomenclature or their locations;

d. (U) The retention or dissemination of information required by law to be retained or disseminated;

e. (U) The retention or processing of communications in emergency data backup systems, provided that only administrative, collection, or technical personnel have access to such systems. In the event that information from such systems must be used to restore lost, destroyed, or inaccessible data, CIA shall apply these procedures to the transferred data;

f. (U) CIA's performance of lawful oversight functions of its personnel or systems, or lawful oversight functions of the NSD and ODNI, or the applicable Offices of the Inspectors General; or

g. (U) The retention, processing, analysis, or dissemination of information necessary to comply with a specific congressional mandate or order of a court within the United States.

h. (U) Notwithstanding any other section in these procedures, CIA may conduct vulnerability assessments using information acquired pursuant to section 702 of the Act in order to ensure that CIA systems have not been compromised. The information used by CIA may be retained for a period not to exceed one year solely for that limited purpose. Any information retained for this purpose may be disseminated only in accordance with the applicable provisions of these procedures. While retained in databases for vulnerability assessments, the section 702-acquired information may not be accessed for any other purpose.

7. (U) CIA will also follow the following procedures:

a. (U) Privileged Communications. CIA may receive unminimized communications, acquired pursuant to section 702 of FISA, to which an attorney is a party. These provisions address the retention, dissemination, and use of information in such communications and apply when CIA personnel processing a communication acquired pursuant to section 702 of FISA determine (based on the information in the communication or other information of which the CIA processing personnel are aware) that the communication is between an attorney (or any person who, based on the information in the communication, appears clearly to be communicating on behalf of an attorney, such as a paralegal or administrative assistant) and a client.

(1) (U) After discovering such a communication, if CIA personnel processing a communication make an affirmative determination that the communication does not contain foreign intelligence information or evidence of a crime, the communication must be destroyed irrespective of whether the communication contains information protected by the attorney-client privilege.

(2) (U) If CIA personnel processing such a communication determine that the communication appears to contain foreign intelligence information or evidence of a crime, the personnel processing the communication must bring the communication to the attention of CIA's Office of General Counsel for action as set forth below.

(3) ~~(S//NF)~~ Privileged Communications Pertaining to a Criminal Charge in the United States. [redacted] If the

communication contains privileged information pertaining to a criminal charge in the United States, the communication shall be segregated.

(4) [redacted]

[redacted]

[redacted]

(7) ~~(S//NF)~~ [redacted] dissemination of attorney-client privileged information [redacted] outside CIA shall be limited to the greatest extent practicable, accompanied by appropriate handling controls, and shall include language advising recipients (1) that the report contains information obtained from communications that may be subject to the attorney-client privilege, (2) that use of the information is provided for intelligence purposes only and may not be used in any trial, hearing, or other proceeding absent express approval by the Attorney General, and (3) that further dissemination is prohibited absent express approval of the Assistant Attorney General for National Security or his or her designee. [redacted]

[redacted]

(9) [redacted] CIA shall keep a record of all disseminations outside CIA of attorney-client privileged information of the type described in subparagraphs 3 and 5 above.

b. (U) Dissemination to Other Federal Agencies for Technical or Linguistic Assistance. It is anticipated that CIA may obtain from NSA and FBI unminimized information or communications that, because of their technical or linguistic content, may require further analysis by other federal agencies of the U.S. Government (collectively "assisting federal agencies") to assist CIA in determining their meaning or significance. Notwithstanding other provisions of these minimization procedures, CIA may disseminate computer disks, tape recordings, transcripts, or other information or items containing unminimized information or communications acquired by NSA or FBI pursuant to section 702 of the Act to assisting federal agencies for further processing and analysis, provided that the following restrictions apply with respect to any materials so disseminated:

(1) (U) Dissemination to assisting federal agencies will be solely for translation or analysis of such information or communications, and assisting federal agencies will make no use of any information or any communication of or concerning any person except to provide technical assistance to CIA.

(2) (U) Dissemination will be only to those personnel within assisting federal agencies involved in the translation or analysis of such information or communications. The number of such personnel will be restricted to the extent feasible. There will be no further dissemination within assisting federal agencies of this raw data.

(3) (U) Assisting federal agencies will make no permanent agency record of information or communications of or concerning any person referred to or recorded on computer disks, tape recordings, transcripts, or other items disseminated by CIA to assisting federal agencies, provided that assisting federal agencies may maintain such temporary records as are necessary to enable them to assist CIA with the translation or analysis of such information. Records maintained by assisting federal agencies for this purpose may not be disseminated within the assisting federal agency, except to personnel involved in providing technical assistance to CIA.

(4) (U) Upon the conclusion of such technical assistance to CIA, computer disks, tape recordings, transcripts, or other items or information disseminated to assisting federal agencies will either be returned to CIA or be destroyed with an accounting of such destruction made to CIA.

c. (U) Dissemination to Foreign Governments. CIA may disseminate nonpublicly available identity or personally identifiable information concerning United States persons to foreign governments provided that such information is foreign intelligence information and either (i) the Attorney General approves the dissemination; or (ii) CIA disseminates the information under procedures that have been approved by the Attorney General. In addition, CIA may disseminate such foreign intelligence information acquired pursuant to section 702 of the Act to the extent authorized by the Director of the CIA, and in accordance with Director of National Intelligence Intelligence Community directives. CIA may make such disseminations without specific Attorney General approval subject to the following procedures:

(1) [redacted]

(3) (U) Procedures for technical or linguistic assistance. It is anticipated that CIA may obtain from NSA and FBI unminimized information or communications that, because of their technical or linguistic content, may require further analysis by foreign governments (collectively "assisting foreign governments") to assist CIA in determining their meaning or significance. Notwithstanding other provisions of these minimization procedures, CIA may disseminate computer disks, tape recordings, transcripts, or other information or items containing unminimized information or communications acquired by NSA or FBI pursuant to section 702 of the Act to assisting foreign governments for further processing and analysis, provided that the following restrictions apply with respect to any materials so disseminated:

(a) (U) Dissemination to assisting foreign governments will be solely for translation or analysis of such information or communications, and assisting foreign

governments will make no use of any information or any communication of or concerning any person except to provide technical assistance to CIA.

(b) (U) Dissemination will be only to those personnel within assisting foreign governments involved in the translation or analysis of such information or communications. The number of such personnel will be restricted to the extent feasible. There will be no further dissemination within assisting foreign governments of this raw data.

(c) (U) Assisting foreign governments will make no permanent agency record of information or communications of or concerning any person referred to or recorded on computer disks, tape recordings, transcripts, or other items disseminated by CIA to assisting foreign governments, provided that assisting foreign governments may maintain such temporary records as are necessary to enable them to assist CIA with the translation or analysis of such information. Records maintained by assisting foreign governments for this purpose may not be disseminated within the assisting foreign government, except to personnel involved in providing technical assistance to CIA.

(d) (U) Upon the conclusion of such technical assistance to CIA, computer disks, tape recordings, transcripts, or other items or information disseminated to assisting foreign governments will either be returned to CIA or be destroyed with an accounting of such destruction made to CIA.

(e) (U) Any information that assisting foreign governments provide to CIA as a result of such technical assistance may be disseminated by CIA in accordance with these minimization procedures.

(4) (U) CIA will make a written record of each dissemination approved pursuant to these procedures, and information regarding such disseminations and approvals will be made available for review by the Department of Justice.

d. (U) Compliance With Crimes Reporting Obligations. Notwithstanding other provisions of these minimization procedures, information that is not foreign intelligence information, but reasonably appears to be evidence of a crime that has been, is being, or is about to be committed, may be retained and disseminated (including United States person identities) to the FBI and other appropriate federal law enforcement authorities, in accordance with 50 U.S.C. §§ 1806(b) and 1825(c), Executive Order No. 12333, and, where applicable, the crimes reporting procedures set out in the August 1995 "Memorandum of Understanding: Reporting of Information Concerning Federal Crimes," or any successor document.

8. (U) Any communication received by CIA that is acquired through the targeting of a person who at the time of targeting was reasonably believed to be a non-United States person located outside the United States but is in fact located inside the United States at the time such communication is acquired or was in fact a United States person at the time of targeting

will be destroyed unless the Director of the CIA specifically determines in writing and on a communication-by-communication basis that such communication is reasonably believed to contain significant foreign intelligence information or evidence of a crime that has been, is being, or is about to be committed.

9. ~~(S//NF)~~ In the event that CIA seeks to use any information acquired pursuant to section 702 during a time period when there is uncertainty about the location of the target of the acquisition because [redacted] post-tasking checks described in NSA's section 702 targeting procedures were not functioning properly, CIA will follow its internal procedures for determining whether such information may be used (including, but not limited to, in FISA applications, section 702 targeting, and disseminations). Except as necessary to assess location under this provision, CIA may not use or disclose any information acquired pursuant to section 702 during such time period unless CIA determines, based on the totality of the circumstances, that the target is reasonably believed to have been located outside the United States at the time the information was acquired. If CIA determines that the target is reasonably believed to have been located inside the United States at the time the information was acquired, such information will not be used and will be promptly destroyed.

10. (U) If CIA determines that it must take action in apparent departure from these minimization procedures to protect against an immediate threat to human life and that it is not feasible to obtain a timely modification of these procedures, CIA may take such action immediately. CIA will report the action taken to the ODNI and NSD, which will promptly notify the Foreign Intelligence Surveillance Court (FISC) of such activity.

11. (U) In addition, CIA will follow the following procedures:

    a. (U) Notwithstanding the destruction requirements set forth in these minimization procedures, CIA may retain specific section 702-acquired information if the Department of Justice advises CIA in writing that such information is subject to a preservation obligation in pending or anticipated administrative, civil, or criminal litigation. The Department of Justice will identify in writing the specific information to be retained (including, but not limited to, the target(s) or selector(s) whose information must be preserved and the relevant time period at issue in the litigation), and the particular litigation for which the information will be retained. In order to restrict access to information being retained pursuant to this provision, personnel not working on the particular litigation matter shall not access the section 702-acquired information preserved pursuant to a written preservation notice from the Department of Justice that would otherwise have been destroyed pursuant to these procedures. Other personnel shall only access the information being retained for litigation-related reasons on a case-by-case basis after consultation with the Department of Justice. The Department of Justice shall notify CIA in writing once the section 702-acquired information is no longer required to be preserved for such litigation matters, and then CIA shall promptly destroy the section 702-acquired information as otherwise required by these procedures.

        (1) (U) Each year, CIA will provide NSD with a summary of: (a) all administrative, civil, or criminal litigation matters necessitating preservation of section 702-acquired data

that would otherwise be subject to age off pursuant to paragraph 2, (b) a description of the section 702-acquired information preserved for each such litigation matter, and (c) if possible based on the information available to CIA, a description of the status of each such litigation matter.

(2) (U) In certain circumstances, CIA may receive written notice from the Department of Justice advising CIA to preserve section 702-acquired information that would otherwise be subject to a destruction requirement under paragraphs 7, 8, or 9. CIA will promptly provide NSD with a summary of: (a) all administrative, civil, or criminal litigation matters necessitating preservation of section 702-acquired information that would otherwise be subject to destruction pursuant to paragraphs 7, 8, or 9, (b) a description of the section 702-acquired information preserved for each such litigation matter, and (c) if possible based on the information available to CIA, a description of the status of each such litigation matter. When such circumstances arise, NSD will promptly notify the FISC.

b. (U) The Department of Justice may advise CIA to retain specific section 702-acquired information subject to a destruction requirement other than those specified above in this section because such information is subject to a preservation obligation in pending or anticipated administrative, civil, or criminal litigation. CIA will provide NSD with a summary of: (a) all administrative, civil, or criminal litigation matters necessitating preservation of section 702-acquired information that would otherwise be subject to destruction, (b) a description of the section 702-acquired information preserved for each such litigation matter, and (c) if possible, based on the information available to CIA, a description of the status of each such litigation matter. NSD will promptly notify and subsequently request authorization from the FISC to retain the material as appropriate and consistent with law. CIA will restrict access to and retain such information, in the manner described in subparagraph 11(a), at the direction of the Department of Justice until either the FISC denies the request for authorization to retain the information or the Department of Justice notifies CIA in writing that the information is no longer required to be preserved for such litigation matters. After receiving such notice, CIA shall promptly destroy the section 702-acquired information.

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Date

Loretta E. Lynch
Attorney General of the United States